

David Versfelt (DV 8935)
Elizabeth M. Harris (EH 4368)
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
599 Lexington Avenue
New York, New York 10022
Telephone: 212.536.3900
Facsimile: 212.536.3901

Attorneys for Defendant Kate's Paperie, Ltd.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
KOLO, LLC,	:	
	:	
Plaintiff,	:	
	:	07 Civ. 10653 (CM)
v.	:	
	:	
	:	<u>ANSWER TO AMENDED COMPLAINT</u>
	:	
KATE'S PAPERIE, LTD.,	:	
	:	
Defendant.	:	
-----	X	

Defendant Kate's Paperie, Ltd. ("Kate's," or "Defendant") by its undersigned attorneys,
for its Answer to the Amended Complaint of Kolo, LLC ("Plaintiff") states as follows:

PARTIES

1. Denies knowledge or information sufficient to form a belief as to the truth of each
and every allegation of paragraph 1 of the Complaint.

2. Admits the allegations set forth in paragraph 2 of the Amended Complaint except
denies that Defendant's principal business is located at 1633 Broadway, New York, New York
10019, and avers that Defendant's principal business location is 460 West 34th Street, New York,
New York 10001.

3. Admits the allegations set forth in paragraph 3 of the Complaint.

JURISDICTION

4. Kate's lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint, and so denies those allegations on that basis.

5. Admits upon information and belief that the Court has proper jurisdiction over this action.

6. Admits that venue is proper within this District.

BACKGROUND

7. Denies the allegations set forth in paragraph 7 of the Amended Complaint, and to the extent the allegations in paragraph 7 relate to the Letter of Intent Defendant respectfully refers the Court to the contents thereof.

8. Denies the allegations set forth in paragraph 8 of the Amended Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

9. In response to paragraph 9 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-8 above as if fully set forth herein.

10. Denies the allegations set forth in paragraph 10 of the Amended Complaint.
11. Denies the allegations set forth in paragraph 11 of the Amended Complaint.
12. Denies the allegations set forth in paragraph 12 of the Amended Complaint.
13. Denies the allegations set forth in paragraph 13 of the Amended Complaint.
14. Denies the allegations set forth in paragraph 14 of the Amended Complaint.
15. Denies the allegations set forth in paragraph 15 of the Amended Complaint.
16. Denies the allegations set forth in paragraph 16 of the Amended Complaint.

17. Denies the allegations set forth in paragraph 17 of the Amended Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)**

18. In response to paragraph 18 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-17 above as if fully set forth herein.

19. Denies the allegations set forth in paragraph 19 and to the extent the allegations in paragraph 19 relate to the Shop-in-Shop Agreement, Kate's respectfully refers the Court to the contents thereof.

20. Denies the allegations set forth in paragraph 20 of the Amended Complaint, except admits that Plaintiff began operating a store within Kate's store located at Spring Street on or about June 1, 2007.

21. Denies the allegations set forth in paragraph 21 of the Amended Complaint.

22. Denies the allegations set forth in paragraph 22 of the Amended Complaint, except admits that Plaintiff began operating a store within Kate's store located at Spring Street on or about June 1, 2007.

23. Denies the allegations set forth in paragraph 23 of the Amended Complaint.

24. Denies the allegations set forth in paragraph 24 of the Amended Complaint.

25. Denies the allegations set forth in paragraph 25 of the Amended Complaint.

26. Denies the allegations set forth in paragraph 26 of the Amended Complaint.

27. Denies the allegations set forth in paragraph 27 of the Amended Complaint.

28. Denies knowledge or information sufficient to respond regarding the allegations set forth in paragraph 28 of the Amended Complaint.

29. Denies the allegations set forth in paragraph 29 of the Amended Complaint.

30. Denies the allegations set forth in paragraph 30 of the Amended Complaint.

31. Denies knowledge or information sufficient to respond regarding the allegations set forth in paragraph 31 of the Amended Complaint.

32. Admits the allegations set forth in paragraph 32 of the Amended Complaint.

33. Denies the allegations set forth in paragraph 33 of the Amended Complaint.

34. Denies the allegations set forth in paragraph 34 of the Amended Complaint, except admits that Kate's has commenced a summary proceeding.

35. Denies the allegations set forth in paragraph 35 of the Amended Complaint.

36. Denies the allegations set forth in paragraph 36 of the Amended Complaint.

37. Denies the allegations set forth in paragraph 37 of the Amended Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

38. In response to paragraph 38 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-37 above as if fully set forth herein.

39. States that no answer is required to the allegations set forth in paragraph 39 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

40. Denies the allegations set forth in paragraph 40 of the Amended Complaint.

41. Denies the allegations set forth in paragraph 41 of the Amended Complaint.

42. Denies the allegations set forth in paragraph 42 of the Amended Complaint.

43. Denies the allegations set forth in paragraph 43 of the Amended Complaint.

44. Denies the allegations set forth in paragraph 44 of the Amended Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION
(PROMISSORY ESTOPPEL)**

45. In response to paragraph 45 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-44 above as if fully set forth herein.

46. Denies the allegations set forth in paragraph 46 of the Amended Complaint.

47. Denies the allegations set forth in paragraph 47 of the Amended Complaint.

48. Denies the allegations set forth in paragraph 48 of the Amended Complaint.

49. Denies the allegations set forth in paragraph 49 of the Amended Complaint.

50. Denies the allegations set forth in paragraph 50 of the Amended Complaint.

51. Denies the allegations set forth in paragraph 51 of the Amended Complaint.

**AS AND FOR AN FIFTH CAUSE OF ACTION
(BREACH OF IMPLIED CONTRACT)**

52. In response to paragraph 52 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-51 above as if fully set forth herein.

53. Denies the allegations set forth in paragraph 53 of the Amended Complaint.

54. States that no answer is required to the allegations set forth in paragraph 54 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

55. Denies the allegations set forth in paragraph 55 of the Complaint.

**AS AND FOR A SIXTH CAUSE OF ACTION
(UNJUST ENRICHMENT)**

56. In response to paragraph 56 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-55 above as if fully set forth herein.

57. Denies the allegations set forth in paragraph 57 of the Amended Complaint.

58. States that no answer is required to the allegations set forth in paragraph 58 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

59. States that no answer is required to the allegations set forth in paragraph 59 because each such allegation is a legal conclusion to which no answer is required, and to the extent that a response is required, denies the allegations.

60. Denies the allegations set forth in paragraph 60 of the Amended Complaint.

**AS AND FOR A SEVENTH CAUSE OF ACTION
(BREACH OF CONTRACT)**

61. In response to paragraph 61 of the Amended Complaint, Kate's repeats and realleges paragraphs 1-60 above as if fully set forth herein.

62. Denies the allegations set forth in paragraph 62 of the Amended Complaint.

63. Denies the allegations set forth in paragraph 63 of the Amended Complaint.

64. Denies the allegations set forth in paragraph 64 of the Amended Complaint.

DEFENSES AND AFFIRMATIVE DEFENSES

FIRST

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND

Kolo's claims are barred by the doctrines of estoppel, laches and waiver.

THIRD

Kolo's claims are barred by the doctrine of unclean hands.

FOURTH

Kolo has suffered no damages not sustained as a result of Kolo's own actions.

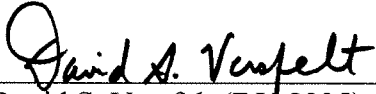
FIFTH

Defendant reserves its right to assert additional defenses and affirmative defenses as they become known to it.

WHEREFORE, Kate's demands judgment dismissing the Amended Complaint with prejudice, together with the costs and disbursements of this action, reasonable attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 28, 2008

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

By: 
David S. Versfelt (DV 8935)
Elizabeth M. Harris (EH 4368)

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KATE'S PAPERIE, LTD.,

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No.: 07-Civ.-10653 (CM)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

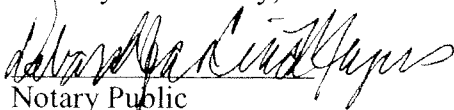
ELIZABETH M. HARRIS, being duly sworn, deposes and says:


1. I am employed by the firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP, having offices at 599 Lexington Avenue, New York, New York 10022. I am over eighteen years of age and am not a party to this action.

2. On February 28, 2008, I caused to be served by electronic mail the **Answer to Amended Complaint** on the following:

Robert Varga, Esq.
Goldberg Segalla LLP
170 Hamilton Avenue
Suite 203
White Plains, NY 10601

Sworn to before me this
28th day of February, 2008


Notary Public

DEBORAH JEAN CERIA MEYERS
Notary Public, State of New York
No. 31-4831744
Qualified in New York County
Commission Expires September 30, 2009 


Elizabeth M. Harris